

[Date]

[Plaintiff's Attorney/Address]

[Defendant's Attorney/Address]

Re:

Dear Counsel:

The case captioned above has been assigned to these Chambers. As you know, Rule 56.2 of this Court governs the scheduling of actions commenced under 28 U.S.C. § 1581(c).

As you know, R. 56.2 requires that the parties submit a Joint Status Report and a proposed briefing schedule. When preparing the proposed briefing schedule, please set out specific due dates (see sample form enclosed).

In addition, the parties challenging the agency determination should prepare and file a list of issues in this case within 30 days after filing of the record. The list will not have any preclusive effect in the litigation but is designed to assist the Court and the parties in setting a logical and efficient briefing schedule. The list will also aid the Court in setting page limitations for briefs. The Court currently limits the parties to 30 pages, excluding tables of contents and authorities, appendices and other such additions, in their main and response briefs, and to 15 pages in reply. Upon receipt of the statement of issues, the Court will decide if these limitations are appropriate for this case.

In preparing the statement of issues, counsel will summarize the details of each issue in one sentence. Next, counsel will identify the statutory or regulatory bases governing the issue. Then counsel will identify the nature of any factual claim: the purpose is to place before the Court those matters that are properly reviewable and not to ask the Court to re-weigh the evidence or make credibility determinations. Finally, counsel will identify the applicable standard of review for each issue. The Court has attached a sample form to serve as a template for the submission.

It is the Court's goal that this list of issues narrow the focus to the substantive issues in this matter, eliminating any peripheral or unnecessary concerns.

Thank you for your cooperation in this matter.

Very truly yours,

Judith M. Barzilay

JMB/mrt

UNITED STATES COURT OF INTERNATIONAL TRADE

BEFORE: HON. JUDITH M. BARZILAY

-----X

[Sample]

[Plaintiff]

v.

Court No.

[Defendant]

-----X

JOINT SCHEDULING ORDER

Pursuant to Rule 56.2 of the Rules of the United States Court of International Trade and upon consideration of the parties' proposed briefing schedule, it is hereby

ORDERED that:

1. Plaintiff shall file its motion for summary judgment upon the agency record on or before [date].
2. Defendant and Defendant-Intervenor shall file their responsive briefs on or before [date].
3. Plaintiff shall file its reply on or before [date].
4. Motion for oral argument on the motion for judgment on the agency record shall be made in accordance with Rule 56.2(e).

\_\_\_\_\_  
Judge

Dated: \_\_\_\_\_, 2000  
New York, NY

## Statement of Issues<sup>1</sup>

### A. Issue Number 1: Commissions

#### 1. Statement of the Issue:

ITA failed to deduct commissions paid to related consignment agents from US. price pursuant to 19 U.S.C. § 1677a(e)(1) or to make an adjustment for differences in commissions pursuant to 19 U.S.C. § 1677b(a)(4)(B).

#### 2. Type of Claim, Statutory Provisions Applicable, and Standard of Review

Legal: The plain language of 19 U.S.C. § 1677a(e)(1) requires ITA to deduct commissions from exporter's sales prices. ITA's methodology should be reviewed under the first prong of the *Chevron* standard. In the alternative, ITA should have considered whether the commissions qualified for a circumstance of sale adjustment pursuant to 19 U.S.C. § 1677b(a)(4)(B), case law, and agency practice. ITA's methodology should be reviewed under the second prong of *Chevron*, "arbitrary or capricious," or "abuse of discretion" standards.

### B. Issue Number 2: Third-Country Sales Prices

#### 1. Statement of the Issue:

ITA failed to collect and consider using third-country sales prices as a basis for foreign market value or otherwise make a factual record to support its determination.

#### 2. Type of Claim, Statutory Provisions Applicable, and Standard of Review:

Legal: According to *Floral Trade Council v. United States*, 15 CIT 497, 499, 775 F. Supp. 1492, 1496 (1991), *aff'd*, 67 F.3d 318 (Fed. Cir. 1995), 19 U.S.C. § 1677b(a)(2), and

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<sup>1</sup>This statement of the issues, prepared by Stewart & Stewart, was submitted in response to the Court's order in CIT Consol. Court No. 96-09-02209.

19 C.F.R. § 353.48(b), ITA has the discretion to reject third-country sales prices as a basis for foreign market value and rely on constructed value where there is an adequate factual basis in the record for doing so. ITA's failure to collect information uniquely in the possession of the Colombian growers and its failure to compile a record adequate to the task of applying the law should be reviewed under the "abuse of discretion" standard.

Factual: The record evidence does not support ITA's decision to reject third-country prices for all Colombian growers. ITA's decision should be reviewed under the *Universal Camera* standard.

#### C. Issue Number 3: Third Country Selling Expenses and Profits

1. Statement of the Issue:

ITA failed to rely on actual third country, selling expenses and profit for those companies with viable third country markets in calculating constructed value.

2. Type of Claim, Statutory Provisions Applicable, and Standard of Review:

Legal: Although the statute does not specifically address this issue. 19 U.S.C. § 1677b(e)(1)(B) in general requires ITA to use "actual" expenses incurred and profits earned on sales except where those amounts fall below the statutory minimums. ITA's methodology should be reviewed under the second prong of the *Chevron* standard.

#### D. Issue Number 4: Cash Deposit Instructions

1. Statement of the Issue:

ITA failed to draft cash deposit instructions that would prevent Colombian growers from avoiding duties at their own company-specific rates and failed to publish those instructions in the Federal Register such that interested parties could comment.

2. Type of Claim, Statutory Provisions Applicable, and Standard of Review:

Legal: As reflected in 19 U.S.C. §§ 1673 and 1675(a)(2), the remedial purpose of the statute requires the imposition of antidumping duties to force producers/exporters with dumping margins to raise their U.S. prices by the amount of their dumping margins. Section 1675(a) of the statute requires ITA to publish the results of administrative reviews with notice of any estimated duty to be deposited. Section 353.22(e)(1) of the regulations require ITA to assess antidumping duties at the cash deposit rate in the absence of a review request.

ITA's cash deposit instructions should be reviewed under the second prong of the *Chevron* standard. ITA's decision not to publish its cash deposit instructions methodology should be reviewed under the first prong of the *Chevron* standard as well as the procedural due process standard.

E. Issue Number 5: Publication of Margin

1. Statement of the Issue:

ITA failed to assign Flor Colombia, S.A. a company-specific margin in the Federal Register notice announcing its final determination.

2. Type of Claim, Statutory Provisions Applicable, and Standard of Review:

Legal: Section 1675(a) of the statute requires ITA to publish the results of administrative reviews together with notice of any duty to be assessed and estimated duty to be deposited in the Federal Register. ITA's decision should be review under the first prong of the *Chevron* test.